

SENATE BILL No. 519

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-8.8.

Synopsis: Cost recovery for low carbon energy facilities. Authorizes the utility regulatory commission (IURC) to provide financial incentives for certain projects related to the construction or operation of low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities in the same manner that the IURC provides financial incentives for new energy production or generating facilities or coal gasification facilities. Makes conforming amendments.

Effective: July 1, 2009.

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January 15, 2009, read first time and referred to Committee on Utilities & Technology.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 519

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-8.8-1, AS AMENDED BY P.L.175-2007,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 1. (a) The general assembly makes the following
4 findings:

5 (1) Growth of Indiana's population and economic base has created
6 a need for new energy production or generating facilities in
7 Indiana.

8 (2) The development of a robust and diverse portfolio of energy
9 production or generating capacity, including coal gasification and
10 the use of renewable energy resources **and low carbon dioxide**
11 **emitting or noncarbon dioxide emitting resources**, is needed if
12 Indiana is to continue to be successful in attracting new
13 businesses and jobs.

14 (3) Indiana has considerable natural resources that are currently
15 underutilized and could support development of new energy
16 production or generating facilities, including coal gasification
17 facilities **and low carbon dioxide emitting or noncarbon**



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dioxide emitting energy production or generating facilities, at an affordable price.

(4) Certain regions of the state, such as southern Indiana, could benefit greatly from new employment opportunities created by development of new energy production or generating facilities utilizing the plentiful supply of coal from the geological formation known as the Illinois basin.

(5) Technology can be deployed that allows high sulfur coal from the geological formation known as the Illinois Basin to be burned or gasified efficiently while meeting strict state and federal air quality limitations. Specifically, the state should encourage the use of advanced clean coal technology, such as coal gasification.

(6) It is in the public interest for the state to encourage the construction of new energy production or generating facilities that increase the in-state capacity to provide for current and anticipated energy demand at a competitive price.

(7) It is in the public interest for the state to encourage the study, analysis, and construction of low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities, as well as carbon dioxide capture, transportation, and storage facilities.

(b) The purpose of this chapter is to enhance Indiana's energy security and reliability by ensuring all of the following:

(1) Indiana's energy production or generating capacity continues to be adequate to provide for Indiana's current and future energy needs, including the support of the state's economic development efforts.

(2) The vast and underutilized coal resources of the Illinois Basin are used as a fuel source for new energy production or generating facilities.

(3) The electric transmission and gas transportation systems within Indiana are upgraded to distribute additional amounts of electricity and gas more efficiently.

(4) Jobs are created as new energy production or generating facilities are built in regions throughout Indiana.

(5) The study, analysis, and construction of low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities are encouraged at the same time as are new coal fired and other fossil fuel based energy production or generating facilities.

SECTION 2. IC 8-1-8.8-2, AS AMENDED BY P.L.175-2007, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2009]: Sec. 2. As used in this chapter, "clean coal and energy projects" means any of the following:

(1) Any of the following projects:

(A) Projects at new energy production or generating facilities that employ the use of clean coal technology and that produce energy, including substitute natural gas, primarily from coal or gases, derived from coal from the geological formation known as the Illinois Basin.

(B) Projects to provide advanced technologies that reduce regulated air emissions from existing energy production or generating plants that are fueled primarily by coal or gases from coal from the geological formation known as the Illinois Basin, such as flue gas desulfurization and selective catalytic reduction equipment.

(C) Projects to provide electric transmission facilities to serve a new energy production or generating facility **or a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.**

(D) Projects that produce substitute natural gas from Indiana coal by construction and operation of a coal gasification facility.

(2) Projects to develop alternative energy sources, including renewable energy projects, **low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facilities**, and coal gasification facilities.

(3) The purchase of fuels **or energy** produced by a coal gasification facility **or by a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.**

(4) Projects described in subdivisions (1) through ~~(3)~~ **(2)** that use coal bed methane.

SECTION 3. IC 8-1-8.8-4, AS AMENDED BY P.L.175-2007, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. As used in this chapter, "coal gasification facility" means a facility in Indiana that uses a manufacturing process that converts coal into a clean gas that can be used:

(1) as a fuel to generate energy; or

(2) as substitute natural gas.

SECTION 4. IC 8-1-8.8-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.5. As used in this chapter, "construction costs" includes costs associated with the building, construction, or**

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expansion of a new or existing low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility, including the portion of debt and equity financing that is:

(1) associated with an eligible business's investment in the facility; and

(2) if the eligible business is an energy utility, allocated to the eligible business's retail jurisdiction;

regardless whether the facility for which the costs are incurred is ultimately completed or placed in service.

SECTION 5. IC 8-1-8.8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. As used in this chapter, "costs associated with qualified utility system property" means capital, operation, maintenance, depreciation, tax costs, and financing costs of or for qualified utility system property. **For purposes of a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility, the term includes preconstruction and construction costs.**

SECTION 6. IC 8-1-8.8-6, AS AMENDED BY P.L.175-2007, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. As used in this chapter, "eligible business" means an energy utility (as defined in IC 8-1-2.5-2) or owner of a coal gasification facility that:

(1) proposes to construct or repower a new energy production or generating facility **or a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility;**

(2) proposes to construct or repower a project described in section 2(1) or 2(2) of this chapter;

(3) undertakes a project to develop alternative energy sources, including renewable energy projects; or

(4) purchases fuels **or energy** produced by a coal gasification facility **or a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.**

SECTION 7. IC 8-1-8.8-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7.5. (a) As used in this chapter, "low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility" means an energy production or generating facility that is intended to produce:

(1) no carbon dioxide as a byproduct of the production or generation of energy; or

(2) less carbon dioxide per megawatt hour of electricity

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generated than is produced per megawatt hour of electricity generated by a coal fired or other fossil fuel based energy production or generating facility.

(b) The term includes the transmission lines and other associated equipment employed specifically to serve a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility.

SECTION 8. IC 8-1-8.8-8, AS AMENDED BY P.L.175-2007, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) As used in this chapter, "new energy production or generating facility" refers to a generation or coal gasification facility that satisfies all of the following:

(1) The facility produces energy primarily from coal or gases from coal from the geological formation known as the Illinois Basin.

(2) The facility is a:

(A) newly constructed or newly repowered energy generation plant; or

(B) newly constructed generation capacity expansion at an existing facility; plant;

dedicated primarily to serving Indiana retail customers.

(3) The repowering, construction, or expansion of the facility was begun by an Indiana utility after July 1, 2002.

(4) Except for a facility that is a clean coal and energy project under section 2(2) of this chapter, the facility has an aggregate rated electric generating capacity of at least one hundred (100) megawatts for all units at one (1) site or a generating capacity of at least four hundred thousand (400,000) pounds per hour of steam.

(b) The term includes the transmission lines, gas transportation facilities, and associated equipment employed specifically to serve a new energy generating or coal gasification facility.

SECTION 9. IC 8-1-8.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. As used in this chapter, "operating costs" includes costs related to or resulting from placing into service, operating, and maintaining a new low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility, including amortized capital investment costs that are reasonable and necessary.

SECTION 10. IC 8-1-8.8-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.7. As used in this chapter,

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1 **"preconstruction costs" means costs associated with the study,**
 2 **analysis, or development of a new low carbon dioxide emitting or**
 3 **noncarbon dioxide emitting energy production or generating**
 4 **facility, including siting, design, licensing, and permitting costs,**
 5 **regardless of whether the facility for which the costs are incurred**
 6 **is ultimately constructed or placed in service.**

7 SECTION 11. IC 8-1-8.8-9, AS AMENDED BY P.L.175-2007,
 8 SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2009]: Sec. 9. As used in this chapter, "qualified utility system
 10 property" means any:

11 (1) new energy **production or** generating or coal gasification
 12 facility; **or**

13 (2) **new low carbon dioxide emitting or noncarbon dioxide**
 14 **emitting energy production or generating facility;**

15 used, or to be used, in whole or in part, by an energy utility to provide
 16 retail energy service (as defined in IC 8-1-2.5-3) regardless of whether
 17 that service is provided under IC 8-1-2.5 or another provision of this
 18 article.

19 SECTION 12. IC 8-1-8.8-11 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) The commission
 21 shall encourage clean coal and energy projects by creating the
 22 following financial incentives for clean coal and energy projects, if the
 23 projects are found to be reasonable and necessary:

24 (1) The timely recovery of costs incurred during construction and
 25 operation of projects described in section 2(1) or 2(2) of this
 26 chapter.

27 (2) The authorization of up to three (3) percentage points on the
 28 return on shareholder equity that would otherwise be allowed to
 29 be earned on projects described in subdivision (1).

30 (3) Financial incentives for the purchase of fuels **or energy**
 31 **produced by a coal gasification facility or by a low carbon**
 32 **dioxide emitting or noncarbon dioxide emitting energy**
 33 **production or generating facility,** including cost recovery and
 34 the incentive available under subdivision (2).

35 (4) Financial incentives for projects to develop alternative energy
 36 sources, including renewable energy projects.

37 (5) **For a low carbon dioxide emitting or noncarbon dioxide**
 38 **emitting energy production or generating facility, the timely**
 39 **recovery of preconstruction costs, construction costs, and**
 40 **operating costs, to the extent that the costs have not already**
 41 **been recovered.**

42 ~~(5)~~ (6) Other financial incentives the commission considers

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1 appropriate.

2 (b) An eligible business must file an application to the commission
3 for approval of a clean coal and energy project under this section. This
4 chapter does not relieve an eligible business of the duty to obtain any
5 certificate required under IC 8-1-8.5 or IC 8-1-8.7. An eligible business
6 seeking a certificate under IC 8-1-8.5 or IC 8-1-8.7 and this chapter for
7 one (1) project may file a single application for all necessary
8 certificates. If a single application is filed, the commission shall
9 consider all necessary certificates at the same time.

10 (c) The commission shall promptly review an application filed
11 under this section for completeness. The commission may request
12 additional information the commission considers necessary to aid in its
13 review.

14 (d) The commission shall, after notice and hearing, issue a
15 determination of a project's eligibility for the financial incentives
16 described in subsection (a) not later than one hundred twenty (120)
17 days after the date of the application, unless the commission finds that
18 the applicant has not cooperated fully in the proceeding.

19 SECTION 13. IC 8-1-8.8-12, AS AMENDED BY P.L.175-2007,
20 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2009]: Sec. 12. (a) The commission shall provide financial
22 incentives to eligible businesses for:

23 (1) new energy ~~producing~~ **production** and generating facilities;
24 **and**

25 (2) **new low carbon dioxide emitting or noncarbon dioxide**
26 **emitting energy production or generating facilities;**

27 in the form of timely recovery of the costs incurred in connection with
28 the **preconstruction activities**, construction, repowering, expansion,
29 operation, or maintenance of the facilities, **as applicable.**

30 (b) An eligible business seeking authority to timely recover the costs
31 described in subsection (a) must apply to the commission for approval
32 of a rate adjustment mechanism in the manner determined by the
33 commission.

34 (c) An application must include the following:

35 (1) A schedule for the completion of construction, repowering, or
36 expansion of the ~~new energy generating or coal gasification~~
37 facility for which rate relief is sought.

38 (2) Copies of the most recent integrated resource plan filed with
39 the commission, if applicable.

40 (3) The amount of capital investment by the eligible business in
41 the ~~new energy generating or coal gasification~~ facility.

42 (4) Other information the commission considers necessary.

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(d) The commission shall allow an eligible business to recover the costs associated with qualified utility system property if the eligible business provides substantial documentation that the expected costs associated with qualified utility system property and the schedule for incurring those costs are reasonable and necessary.

(e) The commission shall allow an eligible business to recover the costs associated with the purchase of fuels **or energy** produced by a coal gasification facility **or a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility** if the eligible business provides substantial documentation that the costs associated with the purchase are reasonable and necessary.

(f) A retail rate adjustment mechanism proposed by an eligible business under this section may be based on actual or forecasted data. If forecast data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct for any variance between the forecasted costs and the actual costs.

SECTION 14. IC 8-1-8.8-13, AS AMENDED BY P.L.175-2007, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. An eligible business shall file a monthly report with the lieutenant governor stating the following information:

(1) The amount of Illinois Basin coal, if any, purchased during the previous month for use in a new energy generating or coal gasification facility.

(2) The amount of any fuel **or energy that is:**

(A) produced by a coal gasification facility **or a low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating facility;** and

(B) purchased by the eligible business during the previous month.

(3) Any other information the lieutenant governor may reasonably require.

SECTION 15. IC 8-1-8.8-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) The group shall conduct an annual study on the use, availability, and economics of using:

(1) renewable energy resources; **and**

(2) **low carbon dioxide emitting or noncarbon dioxide emitting energy production or generating technologies to produce electricity;**

in Indiana. Each year, the group shall submit a report on the study to the commission for inclusion in the commission's annual report to the regulatory flexibility committee described in IC 8-1-2.5-9 and

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- 1 IC 8-1-2.6-4.
2 (b) The report **required by subsection (a)** must include suggestions
3 from the group to encourage the development and use of:
4 (1) renewable energy resources and technologies; **and**
5 (2) **low carbon dioxide emitting and noncarbon dioxide**
6 **emitting energy production or generating technologies;**
7 appropriate for use in Indiana.

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